

## Bureau of Reclamation, Interior

## § 426.16

land per paragraphs (c)(3) and (e) of this section begins on the date of the previous landowner's death.

### § 426.15 Commingling.

(a) *Definition for purposes of this section:*

*Commingled water* means irrigation water and nonproject water that use the same facilities.

(b) *Application of Federal reclamation law and these regulations to prior commingling provisions in contracts.* If a district entered into a contract with Reclamation prior to October 1, 1981, and that contract has provisions addressing commingled water situations, those provisions stay in effect for the term of that contract and any renewals of it.

(c) *Establishment of new commingling provision in contracts.* New, amended, or renewed contracts may provide that irrigation water can be commingled with nonproject water as follows:

(1) If the facilities used for the commingling of irrigation water and nonproject water are constructed without funds made available pursuant to Federal reclamation law, the provisions of Federal reclamation law and these regulations will apply only to the landholders who receive irrigation water, provided:

(i) That the water requirements for eligible lands can be established; and

(ii) The quantity of irrigation water to be used is less than or equal to the quantity necessary to irrigate eligible lands.

(2) If the facilities used for commingling irrigation water and nonproject water are funded with monies made available pursuant to Federal reclamation law, landholders who receive nonproject water will be subject to Federal reclamation law and these regulations unless:

(i) The district collects and pays to the United States an incremental fee which reasonably reflects an appropriate share of the cost to the Federal Government, including interest, of storing or delivering the nonproject water; and

(ii) The fee will be established by Reclamation and will be in addition to the district's obligation to pay for capital, operation, maintenance, and re-

placement costs associated with the facilities required to provide the service.

(3) If paragraphs (c)(2) (i) and (ii) of this section are met, the provisions of Federal reclamation law and these regulations will be applicable to only those landholders who receive irrigation water. Accordingly, the provisions of Federal reclamation law and these regulations will not be applicable to landholders who receive nonproject water delivered through facilities funded with monies made available pursuant to Federal reclamation law if those paragraphs are met.

(d) *When Federal reclamation law and these regulations do not apply.* Federal reclamation law and these regulations do not apply to landholders receiving irrigation water from federally financed facilities if the irrigation water is acquired by an exchange and that exchange results in no material benefit to the recipient of the irrigation water.

### § 426.16 Exemptions and exclusions.

(a) *Army Corps of Engineers (Corps) projects.* (1) If Reclamation determines that land receives its agricultural water from a Corps project, Reclamation will exempt that land from specific provisions of Federal reclamation law, including the RRA, unless:

(i) Federal law explicitly designates, integrates, or incorporates that land into a Federal Reclamation project; or

(ii) Reclamation provides project works for the control or conveyance of the agricultural water supply from the Corps project to that land.

(2) Upon such determination, Reclamation will:

(i) Notify the district of its exemption status;

(ii) Require the district's agricultural water users to continue, under contracts made with Reclamation, to repay their share of construction, operation and maintenance, and contract administration costs of the Corps project allocated to conservation or irrigation storage; and

(iii) At the request of the district delete provisions of the district's repayment or water service contract that imposes acreage limitation for those lands served by Corps projects.